

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4153 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

TARABA SHIVASINGH CHAUHAN

Versus

CHAUHAN DALPATSINGH JETUBHAI

Appearance:

MR MUKESH R SHAH for Petitioners

MR JV JAPTEE for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/03/98

ORAL JUDGEMENT

The petitioners, seven in number, are members of Kalvan Gram Panchayat (hereinafter referred as the "Gram Panchayat" or "the Panchayat"). Petitioner No. 2 is the Deputy Sarpanch and respondent No. 1 was the Sarpanch of the Gram Panchayat. There are 10 members inclusive of Sarpanch. A motion of no confidence was moved by the petitioners against the Sarpanch, respondent No. 1 herein, under Section 70 of the Gujarat Panchayats Act, 1993 (hereinafter referred to as "the Act"). A meeting

was called to discuss no confidence motion against respondent No. 1 on 4.2.1997. Eight members inclusive of respondent No. 1 were present at the said meeting and two members were absent. No confidence motion was passed in the said meeting against the Sarpanch respondent No. 1 herein by 7 votes in favour of the no confidence motion and one vote against that motion.

2. Aggrieved by resolution No. 1 dated 4.2.1997, by which no confidence motion was passed against respondent No. 1, respondent No. 1 preferred an appeal before the Appellate Committee, District Panchayat, Sabar Kantha under Section 242 of the Act and the same was dismissed by order dated 28.2.1997 upon the Appellate Committee holding that the motion of no confidence was passed by 2/3rd majority.

3. Consequently, the Election Officer, Collector of Sabarkantha - respondent No. 2 herein, published an election programme for election for the post of Sarpanch of Kalvan Gram Panchayat on 12.5.1997; 19.5.1997 was the date for filing the nomination, 20.5.1997 was the date for verification and 22.5.1997 was the date for withdrawal and 8.6.1997 was the date of election.

4. On the date of election i.e. on 8.6.1997, on the notice board of the Panchayat, a notice was published that in view of the order dated 6.6.1997 passed by the Deputy Secretary (Appeals) to the State Government, Panchayat Department resolution No. 1 dated 4.2.1997 has been set aside in a revision application filed by respondent No. 1. The State Government held in its order that petitioner No. 1 who normally makes signature, had put thumb impression in the meeting held on 4.2.1997 and, therefore, her presence at the meeting was doubtful, and, therefore, the election of Sarpanch of Kalvan Gram Panchayat was not required to be held on 8.6.1997.

5. The present petition challenges the aforesaid order of the State Government in revision quashing and setting aside resolution No. 1 dated 4.2.1997 by which no confidence motion was passed against respondent No. 1. The petitioners, seven members of the Gram Panchayat have contended, inter alia, that the no confidence motion was passed rightly and in accordance with law and explaining the circumstances under which petitioner No. 1 had put her thumb impression on the minutes of the meeting held on 4.2.1997 and that in fact petitioner No. 1 had remained present at the meeting held on 4.2.1997 and that the impugned judgment and order dated 6.6.1997

was passed without giving any opportunity of hearing to petitioner No. 1 and to the other petitioners and the same is against the principles of natural justice.

6. Initially, this Court issued notice and granted ad-interim stay of the Government order dated 6.6.1997 and thereafter the Rule was issued and execution and operation of the order dated 6.6.1997 passed by respondent No. 3 was stayed till the disposal of the petition.

7. It is an admitted position that before the impugned order was passed by respondent No. 3, no opportunity of being heard was given to the petitioners and, therefore, the same is against the principles of natural justice and, therefore, without entering into the merits of any other contentions raised in the case, the petition is required to be allowed on the ground that the impugned order dated 6.6.1997 was passed by respondent No. 3 in violation of the principle of natural justice as the same was passed without giving the petitioners any opportunity of being heard.

8. Hence, the petition is allowed. The impugned judgment and order dated 6.6.1997 at Annexure "E" to the petition (by which resolution No. 1 dated 4.2.1997 passed by the Kalvan Gram Panchayat was set aside) is hereby quashed and set aside and the matter is remanded back to respondent No. 3 to decide the same afresh on merits and in accordance with law, after issuing the notices to the petitioners and respondent No. 1 and after giving an opportunity of being heard to the petitioners and respondent No. 1. Since respondent No. 1 is already out of the post of Sarpanch, respondent No. 3 shall decide the matter as expeditiously as possible and preferably within six weeks from the date of receipt of this order.

9. Rule is made absolute accordingly with order as to costs.

March 16, 1998 (M.S. Shah, J.)